

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

CHARLES AVERY,

Plaintiff,

-against-

THE CITY OF NEW YORK; Detective Shante Terrell,
Shield No. 4424; Undercover officer No. 271; and Police
Officers JOHN and JANE DOE 1-10,

**RULE 68
OFFER OF JUDGMENT**

15-CV-6418 (FB) (CLP)

Defendants.

----- x

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, defendants hereby offer to allow plaintiff Charles Avery to take a judgment against the City of New York in this action for the total sum of TWO THOUSAND FIVE HUNDRED AND ONE (\$2,501.00) DOLLARS, plus reasonable attorneys' fees, expenses, and costs to the date of this offer for plaintiff's federal claims.

This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

This offer of judgment may only be accepted up to and including December 27, 2016.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by

defendants or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff has suffered any damages.

Acceptance of this offer of judgment will act to release and discharge defendants; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by plaintiff arising out of the facts and circumstances that are the subject of this action.

Acceptance of this offer of judgment also will operate to waive plaintiff's rights to any claim for interest on the amount of the judgment.

Plaintiff Charles Avery agrees that payment of Two Thousand Five Hundred and One (\$2,501.00) Dollars within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless plaintiff received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide, payment in full or in part. If plaintiff Charles Avery is a Medicare recipient who received medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date plaintiff submits to counsel for defendants a final demand letter from Medicare.

By acceptance of this Rule 68 Offer of Judgment, plaintiff Charles Avery agrees to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer, and a Medicare Set-Aside Trust shall be created, if required by 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26. Plaintiff Charles Avery further agrees to hold harmless defendants and all past and present officials, employees, representatives

and agents of the City of New York, or any agency thereof, regarding any past and/or future Medicare payments, presently known or unknown, made in connection with this matter.

The judgment shall contain and recite the terms and conditions set forth herein.

Dated: New York, New York
December 13, 2016

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
*Attorney for Defendants City, Shante Terrell, and
UC 271*
100 Church Street, Room 3-210
New York, New York 10007
(212) 356-2369

By

Aimee Lulich

Aimee Lulich
Senior Counsel

To: VIA HAND DELIVERY
Robert Marinelli, Esq.
305 Broadway, 9th Floor
New York, NY 10007